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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

YADIR A. ONTIVEROS, as an  
individual, and on behalf of all others  
similarly situated,

Plaintiff,

vs.

SAFELITE FULFILLMENT, INC., a  
Delaware Corporation; SAFELITE  
GROUP, INC., a Delaware  
Corporation; SAFELITE GLASS  
CORP., a Delaware Corporation; and  
DOES 1 through 10,

Defendants.

Case No.: 2:15-cv-07118-DMG-RAO

**PLAINTIFF YADIR ONTIVEROS'  
EX PARTE APPLICATION FOR A  
COURT ORDER: (1) ENJOINING  
SAFELITE FROM ENTERING  
INDIVIDUAL SETTLEMENT  
AGREEMENTS WITH PUTATIVE  
CLASS MEMBERS AS PART OF A  
CHINDARAH CAMPAIGN; (2)  
INVALIDATING THOSE  
SETTLEMENT AGREEMENTS  
ALREADY ENTERED INTO WITH  
PUTATIVE CLASS MEMBERS AS  
PART OF THE CHINDARAH  
CAMPAIGN; (3) REQUIRING A  
CURATIVE LETTER BE SENT TO  
THE PUTATIVE CLASS; AND (4)  
PERMITTING PLAINTIFF TO FILE  
A MOTION FOR SANCTIONS  
AGAINST SAFELITE AND ITS  
COUNSEL FOR THEIR IMPROPER  
CONDUCT IN CONNECTION  
WITH THE CHINDARAH  
CAMPAIGN**

[Filed concurrently with [Proposed]  
Order and Declaration of Paul K.  
Haines]

Judge: Hon. Dolly M. Gee  
Courtroom.: 8C

**TO THE COURT, DEFENDANT AND ITS COUNSEL OF RECORD:**

Plaintiff Yadir Ontiveros (“Plaintiff”) has filed this *ex parte* application because Defendant Safelite Fulfillment, Inc. (“Safelite”) and its counsel are currently engaged in highly inappropriate conduct which requires immediate injunctive relief. Specifically, Safelite is currently in the process of extending individual settlement offers to all putative class members, which Safelite contends is lawful per *Chindarah v. Pick Up Stix Inc.* 171 Cal.App.4th 796 (2009). Based on the information provided to Plaintiff by Safelite’s counsel, it appears that Safelite began extending individual settlement offers to putative class members on or about August 21, 2017, one month **after** Plaintiff filed his Motion for Class Certification, and only one month **before** the hearing date on the Motion. While Plaintiff does not dispute that a defendant usually has a right to enter into individual settlements with putative class members per *Chindarah*, Safelite’s actions are highly improper and immediate injunctive relief is needed for the following reasons:

First, the Court has already summarily adjudicated liability in Plaintiff’s favor on several claims, given that Safelite requested that the Court allow summary judgment to proceed before permitting Plaintiff to file for class certification. *See* Dkt. No. 65 (Court’s MSJ Order, finding Safelite’s PPP Incentive Pay Plan and pay practices to be unlawful in several respects, and adjudicating liability in Plaintiff’s favor on several claims). Yet Safelite falsely refers to Plaintiff’s claims as “disputed” in the *Chindarah* materials provided to putative class members. Moreover, Safelite fails to attach a copy of the MSJ Order, or otherwise mention the Court’s MSJ Order, anywhere in the *Chindarah* materials. Nor does Safelite include a copy of Plaintiff’s Complaint with the *Chindarah* materials. These omissions are of great significance as discussed in the accompanying Points and Authorities.

Second, Plaintiff filed for class certification on July 21, 2017, and his Motion for Class Certification seeks to certify seven classes. *See* Dkt. No. 72. Concurrent with filing for class certification, Plaintiff also filed the Expert Report of J. Michael DuMond, Ph.D., which sets forth the methodology for calculating classwide damages for each of the seven proposed classes. *See* Dkt. No. 72-2.

1 Third, Safelite filed its Opposition to Plaintiff's Motion for Class Certification, on  
 2 August 21, 2017. *See* Dkt. No. 78. **Safelite's Opposition did not oppose certification**  
 3 **of six of the seven classes sought to be certified by Plaintiff.** Nor did Safelite oppose  
 4 Plaintiff's trial plan for adjudicating damages with respect to the six classes that it did  
 5 not oppose.

6 Fourth, because Safelite has conceded class certification is appropriate for six  
 7 classes, and because the Court has already adjudicated liability in Plaintiff's favor on  
 8 several claims, Safelite cannot credibly dispute its classwide liability. In other words,  
 9 there is no bona fide dispute that wages are owed to putative class members, and  
 10 Plaintiff's expert, Dr. DuMond, has set forth the methodology for summarily  
 11 adjudicating the amount of damages owed for the members of each of the six classes  
 12 that are unopposed by Safelite. Because Safelite has not challenged Plaintiff's  
 13 methodology for calculating damage for these six unopposed classes, there is no  
 14 legitimate argument that there is any "bona fide dispute" as to the amount of damages  
 15 owed to these class members for these claims, as calculated per the methodologies  
 16 proposed by Dr. DuMond.<sup>1</sup>  
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18 <sup>1</sup> By way of example, the Court's MSJ Order held that Safelite's PPP Incentive Plan is a  
 19 piece-rate pay plan that fails to separately compensate Technicians for rest periods as  
 20 required by California law. *See* Dkt. No. 65 at 9:1-6. Class 1a identified in Plaintiff's  
 21 Motion for Class Certification seeks to recover rest period premium wages on behalf of  
 22 Technicians paid on Safelite's PPP Incentive Plan. *See* Dkt. No. 72. Because Safelite  
 23 has failed to oppose certification of Class 1a, and because the Court has already found  
 24 that the PPP Incentive Plan is a piece-rate pay plan that fails to compensate separately  
 25 for rest period, there is no dispute that unpaid rest period premium wages are owed to  
 26 the members of Class 1a. The Expert Report of Dr. J. Michael DuMond, Ph.D., filed  
 27 concurrently with Plaintiff's Motion for Class Certification, sets forth the methodology  
 28 for calculating the rest period premium wages owed to the members of Class 1a, which  
 as Dr. DuMond explains can be done through a motion for summary adjudication. *See*  
 Dkt. No. 72-2 at pp. 5-7 (setting forth methodology for calculating rest period premium  
 wages owed to members of Class 1a through their timekeeping and payroll records).  
 Safelite's Opposition to Plaintiff's Motion for Class Certification does not challenge  
 Plaintiff's trial plan for calculating unpaid wages owed to the members of Class 1a.

1 Fifth, because Safelite understands that the damages owed to the members of the  
 2 six unopposed classes can be summarily adjudicated, *on the same date* that it filed its  
 3 Opposition to Plaintiff's Motion for Class Certification, it began extending individual  
 4 *Chindarah* settlements to all putative class members. Again, Safelite did not begin  
 5 extending these individual settlement offers until one month **after** Plaintiff had filed his  
 6 Motion for Class Certification and only one month **before** the Motion will be heard.

7 Sixth, not only are the individual *Chindarah* settlement offers highly improper at  
 8 this stage in the proceedings for the reasons discussed above, but the information  
 9 provided by Safelite to putative class members is untruthful and misleading, as the  
 10 process by which the *Chindarah* campaign is being carried out is highly coercive and  
 11 does not comport with what is required under the law. Moreover, the individual  
 12 settlement offers purport to pay putative class members only \$250 per year that they  
 13 have been with the company, far less than they are indisputably owed, in exchange for a  
 14 full release of any and all claims, known or unknown, that are "related" to the claims in  
 15 this action, including claims that have already been adjudicated in Plaintiff's favor and  
 16 claims under the Private Attorney's General Act, falsely claiming that liability is  
 17 "disputed" and "uncertain". As held in *Aguilar v. Zep Inc.*, "Defenses presented which,  
 18 under all the circumstances, **are unsupported by any evidence, are unreasonable, or**  
 19 **are presented in bad faith**, will preclude a finding of a "good faith dispute [necessary  
 20 for a valid release under California Labor Code §206.5]." *Aguilar v. Zep Inc.*, Case No.  
 21 13-cv-00563-WHO, 2014 WL 1900460 (N.D. Cal. 2014) (emphasis added); *see also*  
 22 *Slavkov v. Fast Water Heater Partners I, LP*, Case No. 14-cv-04324-JST, 2015 WL  
 23 6674575 (N.D. Cal., Nov. 2, 2015) (holding that release purporting to release PAGA  
 24 claims without Court approval was inherently "misleading" in nature). The extensive  
 25 improprieties with Safelite's *Chindarah* campaign are discussed in detail in the  
 26 accompanying Points and Authorities.

26 For the reasons discussed herein and in the Points and Authorities, Plaintiff seeks  
 27 an Order: (1) enjoining Safelite from entering into any individual settlement agreements  
 28 with putative class members as part of a *Chindarah* campaign; (2) invalidating those

1 settlement agreements already entered into with putative class members as part of the  
 2 *Chindarah* campaign; (3) requiring a curative letter be sent to the putative class; and (4)  
 3 permitting Plaintiff to file a Motion for Sanctions against Safelite and its counsel for  
 4 their improper conduct in connection with the *Chindarah* campaign. Alternatively, if  
 5 the Court is not inclined to grant any of the requested relief on an *ex parte* basis,  
 6 Plaintiff respectfully requests that he be permitted to bring a motion for the relief sought  
 7 herein.

8 This *ex parte* application is based upon the accompanying Points and Authorities  
 9 and the Declaration of Paul K. Haines and supporting exhibits. Plaintiff makes this  
 10 Application after providing notice to counsel for Safelite on August 22, 2017 pursuant  
 11 to Central District Local Rule 7-19, and this Initial Standing Order, that Plaintiff would  
 12 file this application on August 23, 2017, that Safelite's opposition must be filed no later  
 13 than 24 hours (or one court day) following electronic service of the *ex parte* application,  
 14 and that if Safelite does not intend to oppose the *ex parte* application, that it must inform  
 15 the courtroom deputy clerk at (213) 894-5452. See Declaration of Paul K. Haines  
 16 ("Haines Decl."), ¶¶ 4-6, Exhs. C-D. Plaintiff's counsel also attempted to reach counsel  
 17 for Safelite, Robert Harris and Daniel Clark, by telephone at approximately 9:35 a.m. on  
 18 August 23, 2017 to orally discuss the substance of the *ex parte* application, but neither  
 19 Mr. Harris nor Mr. Clark answered their phones, and therefore, Plaintiff's counsel left a  
 20 voicemail for both. *Id.*, ¶ 4. Safelite's counsel has represented that Safelite intends to  
 21 oppose this *ex parte* application. *Id.*, ¶ 5, Exh. D.

22 Plaintiff served a courtesy copy of this *ex parte* application along with the  
 23 declaration of Paul K. Haines, and the [proposed] Order by email on August 23, 2017,  
 24 immediately before filing the same with the Court. *Id.*, ¶ 6. Counsel for Safelite is  
 25 Robert A. Harris, Esq. (raharris@vorys.com) and Daniel J. Clark, Esq.  
 26 (djclark@vorys.com) of Vorys, Sater, Seymour and Pease LLP, 52 East Gay Street,  
 27 Columbus, Ohio 43215; Telephone (614) 464-6400; and Brent M. Giddens, Esq.  
 28 (bgiddens@cdblaborlaw.com) and Daphne Bishop (dbishop@cdblaborlaw.com) of

1 Carothers, Disante & Freudenberger LLP, 707 Wilshire Blvd., Suite 5150, Los Angeles,  
2 California 90017; Telephone: (213) 612-6300.

3  
4 Dated: August 23, 2017

HAINES LAW GROUP, APC

5 \_\_\_\_\_/s/ Paul K. Haines \_\_\_\_\_  
6 Paul K. Haines, Esq.  
7 Attorneys for Plaintiff  
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## **POINTS AND AUTHORITIES**

### **I. FACTUAL SUMMARY**

Plaintiff Yadir Ontiveros brings this *ex parte* application for a Court Order to: (1) enjoin Defendant Safelite Fulfillment Inc. from entering into any further individual settlement agreements pending a ruling on Plaintiff's Motion for Class Certification, which is set for hearing on September 29, 2017; (2) invalidating those settlement agreements already entered into with putative class members as part of the *Chindarah v. Pick Up Stix* campaign; (3) require a curative letter to be sent to the putative class; and (4) permitting Plaintiff to file a Motion for Sanctions against Safelite and its counsel for their improper conduct in connection with the *Chindarah* campaign. Alternatively, if the Court is not inclined to grant any of the requested relief on an *ex parte* basis, Plaintiff respectfully requests that he be permitted to bring a motion for the relief sought herein.

*Ex parte* relief is required because immediate injunctive relief is required to prevent this *Chindarah* campaign from continuing, as it only began two days ago. Critically, Safelite did not commence the *Chindarah* campaign until after the Court had already concluded as a matter of law that Safelite's PPP Incentive Pay Plan was unlawful, and after Plaintiff had already filed his Motion for Class Certification. In short, Safelite has waited too long to commence the *Chindarah* campaign, as to find otherwise would be to allow the Court to be used by as a pawn by class action defendants. Specifically, if Safelite's conduct were ratified by this Court, it would fundamentally alter how class actions are litigated by every single defendant going forward. There would no longer be any incentive to have class certification precede summary judgment. Rather, every single defendant would opt-to have summary judgment take place before class certification. If summary judgment is granted in favor of the defendant, the case is over. However, if summary judgment is granted in plaintiff's favor, then defendant still has the opportunity "wait and see" what the motion for class certification looks like, and if it appears that class certification will be granted, rush to settle the claims of individual class members before the Court can enter an order

1 granting class certification for a fraction of what would ultimately be awarded through a  
 2 classwide judgment. This “no-lose” proposition for a class action defendant cannot be  
 3 permitted, as it constitutes blatant gamesmanship upon the judicial system.

4 Nor is class certification in this case a mere theoretical possibility – Safelite’s  
 5 Opposition to Class Certification only opposes certification of one of the seven classes  
 6 that Plaintiff seeks to certify (i.e, Class 1b: PPP Incentive Plan Class – Unpaid Non-  
 7 Productive Time). *See* Dkt. No. 78 (Opposition to Class Certification). As to the  
 8 remaining six classes, Safelite makes **no substantive arguments whatsoever** in  
 9 Opposition to Plaintiff’s Motion for Class Certification; in other words, Safelite  
 10 concedes that certification is appropriate as to the other six proposed classes (the only  
 11 caveat to the following statement is that Safelite contends that the beginning date of the  
 12 class periods for Classes 1a, 3a and 3b should be June 4, 2013 instead of September 9,  
 2011). *See id.* at pp. 3-5.

13 Having conceded that class certification is proper to six of the seven classes, with  
 14 only the passage of time standing between Plaintiff and a class certification order,  
 15 Safelite has begun racing to settle as many of the putative class members’ claims as  
 16 possible before the Court can enter an order granting class certification. Plaintiff’s  
 17 counsel learned that Safelite was engaging in a *Chindarah* campaign on August 21,  
 18 2017 (two days prior to filing this *ex parte* application), after being informed that a  
 19 number of putative class members were receiving a check denoted as a “settlement”. *See*  
 20 Haines Decl., ¶ 2. When Plaintiff’s counsel inquired of Safelite’s counsel what this  
 21 payment represented, Safelite’s counsel informed Plaintiff that Safelite was engaged in  
 22 a *Chindarah* campaign. *See* Haines Decl., ¶ 2, Exh. A. After being provided this  
 23 information, Plaintiff’s counsel immediately demanded that Safelite provide Plaintiff  
 24 with: (1) a template of the materials provided to the putative class settlement members;  
 25 (2) the date that the *Chindarah* campaign began; (3) the number of putative class  
 26 members who were offered settlement agreements through the *Chindarah* campaign; (4)  
 27 how many putative class members accepted the *Chindarah* settlement offers; and (5)  
 28 how the amounts offered in the *Chindarah* settlement were calculated. *Id.*, ¶ 2, Exh. A.



On August 22, 2017, Safelite's counsel provided Plaintiff with a copy of the materials provided to putative class members through the *Chindarah* campaign, and informed Plaintiff's counsel that individual settlements were being extended to all putative class members. *See* Haines Decl., ¶ 3, Exh. B (*Chindarah* materials purportedly provided to putative class members). The *Chindarah* materials and process by which these settlement offers are being extended are problematic in so many respects, that the following section of this *ex parte* application is devoted solely to these issues.

## **II. THE CHINDARAH MATERIALS PROVIDED TO CLASS MEMBERS**

The *Chindarah* materials provided to putative class members include: (1) a settlement check made out to the putative class member in the amount of \$250 for each year that the putative class member had worked for Safelite during the putative class period; (2) a letter from Steve Miggo, SVP Operations & Supply Chain; (3) a "Fact Sheet," which omits several material facts and makes several false representations; and (4) a Settlement Agreement and Release, which is deemed signed by the putative class member immediately upon the cashing of the enclosed settlement check. Haines Decl., ¶ 3, Exh. B. These materials are woefully inadequate for several overarching reasons discussed below. However, even if the *Chindarah* materials provided to putative class members were not riddled with the numerous problems discussed herein, the relief sought through this *ex parte* application would still be appropriate for all of the reasons discussed above. However, the following issues provide even further support for granting the relief sought through this *ex parte* application.

### **A. The *Chindarah* Materials Make Several Materially False and Misleading Statements and Omissions, Including Failing to Attach a Copy of the Complaint or Any Reference to the Court's MSJ Order.**

There are several materially false and misleading statements and omissions made in the *Chindarah* materials. Most glaringly, **there is no mention whatsoever of the Court's MSJ Order**, in which it adjudicated liability in Plaintiff's favor on several of the claims at issue in the lawsuit. Nor do the *Chindarah* materials inform putative class members that Plaintiff had already filed for class certification, and that Safelite did not

1 oppose certification of six of the seven classes sought to be certified by Plaintiff. These  
2 material omissions paint an entirely different procedural posture, and strength of  
3 Plaintiff's claims from that which is portrayed by Safelite, as putative class members are  
4 not informed that the Court has found in Plaintiff's favor on several of the claims **as a**  
5 **matter of law**, and that they would become members of a certified class action given  
6 that Safelite was not opposing class certification of six different classes.

7 Rather than informing putative class members of these facts, Safelite erroneously  
8 informs the putative class members that, "Safelite is doing this to resolve **disputed**  
9 **claims** directly with Employees...**Safelite disputes that it has any liability for the**  
10 **claims in the lawsuits...**" See Haines Decl., ¶ 3, Exh. B (Fact Sheet) (emphasis added).  
11 Safelite further informs putative class members that "whether you will ultimately  
12 receive a payment from the Lawsuits is uncertain – you could receive less than the  
13 settlement amount...or nothing. The only way to guarantee yourself a payment now is  
14 by accepting the Settlement Payment." **These are materially false statements as the**  
15 **Court has already concluded that Safelite has liability for the claims in the lawsuit**  
16 **as a matter of law in its MSJ Order.** See Dkt. No. 65 (MSJ Order).

17 Because Safelite has not disputed certification for six of the seven classes that  
18 Plaintiff seeks to certify, nor has Safelite disputed Plaintiff's methodology for  
19 summarily adjudicating damages, Safelite cannot credibly assert that any "bona fide  
20 dispute" exists as to the amount of these wages and penalties owed. Safelite's  
21 *Chindarah* materials materially misleads the putative class members into believing that  
22 all claims are "disputed" when there is no legitimate dispute. Just because Safelite is  
23 unhappy with the Court's MSJ Order does not mean that the claims are disputed, and to  
24 suggest otherwise is a flippant disregard and disrespect of this Court's Orders. Per Rule  
25 56 of the Federal Rules of Civil Procedure, in granting Plaintiff's Motion for Partial  
26 Summary Judgment, the Court was required to find that "no genuine dispute as to any  
27 material fact and the movant is entitled to judgment as a matter of law." Safelite's  
28 disregard of this Court's MSJ Order should not be condoned.

1        Additionally, no copy of the operative complaint is included in the *Chindara*  
2 materials. Instead, the “Fact Sheet” tells putative class members that the complaint “can  
3 be accessed at <https://pacer.login.uscourts.gov/csologin/login.jsf>,” and that the  
4 Complaint in a related class action filed by Plaintiff’s counsel in Los Angeles Superior  
5 Court, in the matter entitled *Curiel v. Safelite Fulfillment, Inc.* “can be accessed at  
6 <http://www.occourts.org>.” Alternatively, Safelite informs putative class members that  
7 a copy of the complaints can be obtained from Plaintiff’s counsel or by contacting  
8 Safelite’s Human Resources Department.

9        To access the Complaint from PACER requires putative class members to create  
10 an account and pay money to download the document. Even more problematic, Safelite  
11 tells putative class members that it can obtain a copy of the *Curiel* complaint from the  
12 Orange County Superior Court’s website, but *Curiel* is filed in Los Angeles Superior  
13 Court, not Orange County. Of course, even if a putative class member were able to  
14 figure out that Safelite had sent him to the incorrect court’s website, the putative class  
15 member would still be required to create an account and pay money to access a copy of  
16 the *Curiel* Complaint. Short of contacting Plaintiff’s counsel, the only other means by  
17 which a putative class member is informed that he can obtain a copy of the complaints  
18 is by requesting the documents from Safelite’s Human Resources department, which of  
course, is inherently coercive and intimidating.

19        In *County of Santa Clara v. Astra USA, Inc.*, No. C 05-03740 WHA, 2010 WL  
20 2724512, at \*4, 6 (N.D. Cal. July 8, 2010), Judge Alsup invalidated releases obtained  
21 from putative class members, where the letter sent to putative class members did not  
22 contain a copy of the complaint, describe the claims, current status of the case, nor  
23 provide “the important statement that the court of appeals had already vetted and  
24 approved the theory of the case, an important factor in examining the strength of a  
25 claim,” which is very similar to the facts currently before this Court. *See also e.g.*,  
26 *Cheverez v. Plains all American Pipeline, LP*, No. CV15-4113 PSG (JEMx), 2016 WL  
27 861107, at \*4 (C.D. Cal. March 3, 2016) (“Courts routinely hold that releases are  
28

misleading where they do not permit a putative class member to fully evaluate his likelihood of recovering through the class action.”) (citations omitted).

**B. The *Chindarah* Settlement Checks Offer Putative Class Members Less Than What the Court’s MSJ Order has Already Determined They are Undisputedly Owed as a Matter of Law.**

Having lost at summary judgment, and failing to oppose class certification for six of the seven classes sought to be certified by Plaintiff, Safelite is now offering putative class members less money than what it knows they are entitled to **as a matter of law**. In fact, several categories of damages owed to putative class members are undisputed, such as the unpaid wages owed to putative class members for rest period premium wages. As discussed in footnote 1, *supra*, the Court’s MSJ Order held that Safelite’s PPP Incentive Plan is a piece-rate compensation system that fails to separately compensate Technicians for rest periods as required by California law. *See* Dkt. No. 65 at 9:1-6. Class 1a identified in Plaintiff’s Motion for Class Certification seeks to recover rest period premium wages on behalf of Technicians paid on Safelite’s PPP Incentive Plan. *See* Dkt. No. 72. Because Safelite has failed to oppose certification of Class 1a, and because the Court has already found that the PPP Incentive Plan is a piece-rate pay plan that fails to separately compensate for rest periods, there is no dispute that unpaid rest period premium wages are owed to the members of Class 1a. The Expert Report of Dr. J. Michael DuMond, Ph.D., filed concurrently with Plaintiff’s Motion for Class Certification, sets forth the methodology for calculating the rest period premium wages owed to the members of Class 1a, which as Dr. DuMond explains can be done through a motion for summary adjudication. *See* Dkt. No. 72-2 at pp. 5-7 (setting forth methodology for calculating rest period premium wages owed to members of Class 1a through their timekeeping and payroll records). Safelite’s Opposition to Plaintiff’s Motion for Class Certification does not challenge Plaintiff’s trial plan for calculating unpaid wages owed to the members of Class 1a.

Because the amount of these rest period premium wages cannot credibly be disputed by Safelite, there is no “bona fide” dispute under Labor Code 206.5, which is

1 required for a valid release of claims. *See* Cal. Lab. Code § 206.5(a) (“An employer  
 2 shall not require the execution of a release of a claim or right on account of wages due,  
 3 or to become due, or made as an advance on wages to be earned, unless payment of  
 4 those wages has been made. A release required or executed in violation of the  
 5 provisions of this section **shall be null and void as between the employer and the**  
 6 **employee**. Violation of this section by the employer is a misdemeanor.”) (emphasis  
 7 added); *see also Aguilar v. Zep Inc.*, Case No. 13-cv-00563-WHO, 2014 WL 1900460  
 8 (N.D. Cal. 2014) (“In determining whether a “bona fide dispute” exists for the purposes  
 9 of section 206.5, courts have adopted the standard in California Code of Regulations  
 10 title 8, section 13520, which provides: A “good faith dispute” that any wages are due  
 11 occurs when an employer presents a defense, based in law or fact which, if successful,  
 12 would preclude any recovery on the part of the employee...Defenses presented which,  
 13 under all the circumstances, **are unsupported by any evidence, are unreasonable, or**  
 14 **are presented in bad faith**, will preclude a finding of a “good faith dispute.”); *FEI*  
 15 *Enterprises, Inc. v. Kee Man Yoon*, 194 Cal.App.4th 790, 805-06 (2011) (“The critical  
 16 question should be the legal tenability of the justification for non-payment that was  
 17 asserted ... A legal dispute between two parties exists, is ‘**legitimate,**’ ‘**genuine,**’ ‘**bona**  
 18 **fide,**’ or in ‘**good faith**’ where the arguments asserted or positions taken have objective  
 19 legal tenability.”).

20 Here, Safelite’s legal positions “are unsupported by any evidence” and ‘are  
 21 unreasonable” given that these claims have already been summarily adjudicated in  
 22 Plaintiff’s favor. That Safelite is attempting to continue to assert these arguments that  
 23 have been found to have no merit as a matter of law, demonstrate that they are being  
 24 made “in bad faith,” are “illegitimate.” There is no evidence that the settlement  
 25 amounts being offered by Safelite are in any way tethered to the undisputed wages owed  
 26 to putative class members. Because no “bona fide dispute” can exist under the  
 27 circumstances, the releases must be invalidated as to any person to whom Plaintiff  
 28 demonstrates is owed greater wages than he was offered through the *Chindarah*  
 settlement as a matter law.



**C. The Settlement Agreement and Release Purports to Release Claims Without Putative Class Members Even Signing the Agreement, Purports to Release “Unknown” Claims, and Purports to Release Other Claims That Cannot Lawfully be Released.**

Heightening the coercive nature of this *Chindarah* process, the Settlement Agreement and Release provided to putative class members does not require these individuals to actually sign the Settlement Agreement. *See* Haines Decl., ¶ 3, Exh. B (Settlement Agreement and Release). In fact, the Settlement Agreement affirmatively does not require putative class members to sign the Release, in stating that, “Employee’s Cashing, Depositing or Otherwise Tendering The Settlement Check Reflects Employee’s Acceptance Of The Terms Of The Settlement Agreement.” *See id.* at p. 2.

It is axiomatic that a Settlement Agreement and Release purporting to give up important rights must be signed by the parties to the agreement. *See e.g., Gauss v. GAF Corp.*, 103 Cal.App.4th 1110 (2002) (holding that a settlement agreement not signed by one of the parties is not enforceable pursuant to California Code of Civil Procedure section 664.6); *Dent v. Cox Communications Las Vegas, Inc.*, 502 F.3d 1141, 1146 (9th Cir. 2007) (“Typically an employee manifests assent by signing a receipt...which put the employee on notice of the resulting waiver.”); *Levy v. Superior Court*, 10 Cal.4th 578, 583 (finding that a party’s signature on a settlement agreement is required to be enforceable, “[s]ettlement is such a serious step that it requires the client’s knowledge and express consent.”); *Walton v. United Consumers Club, Inc.*, 786 F.2d 303, 307 (7th Cir. 1986) (Absent an employee’s signature on a receipt, “cashing of checks...[usually does] not release [the employee’s] full claims.”). Safelite’s attempt to side-step this requirement by allowing putative class members to simply cash a check that is provided to them simultaneously with the Settlement Agreement, which many putative class members may reasonably assume to be a paycheck and not a release of “unknown” claims shines further light on Safelite’s malfeasance. This is especially true given that outside of the envelope that the settlement check is delivered in states “IMPORTANT: PLEASE OPEN IMMEDIATELY – CHECK ENCLOSED.” *See* Haines Decl., ¶ 3,



1 Exh. B. Notably, the outside of the envelope doesn't mention anything about  
2 individuals releasing claims or the check being for a purported "settlement."

3 The Settlement Agreement also attempts to release "any and all claims, causes of  
4 action, damages, attorneys' fees, and costs, whether known or unknown..." *See* Haines  
5 Decl., ¶ 3, Exh. B at ¶ 5. Such a release of "unknown claims" is improper under these  
6 circumstances. *See e.g., Bond v. Ferguson Enterprises, Inc.*, Case No. 1:09-cv-01662  
7 OWW MJS, 2011 WL 284962, at \*7 (E.D. Cal. Jan. 25, 2011) (holding that release is  
8 overbroad as it "does not track the extent and breadth of Plaintiffs' allegations in this  
9 case and releases unrelated claims of any kind or nature that class members may have  
10 against defendants."); *Tijero v. Aaron Brothers, Inc.*, Case No. C 10-01089 SBA, 2013  
11 WL 60464, at \*9 (N.D. Cal. Jan. 2, 2013) (holding that release for settlement class  
12 members, which included all "known or unknown" claims arising out of employee's  
13 employment, was overly broad and improper.); *Custom Led, LLC v. eBay, Inc.*, Case  
14 No. 12-cv-00350-JST, 2013 WL 4552789, at \*6-7 (N.D. Cal. Aug. 27, 2013) (Court  
15 concludes that the scope of the release is overly broad as "it improperly releases any  
16 claim, known or unknown.").

16 Recognizing that the *Chindarah* process as carried out under the facts of this case  
17 is highly improper and likely to be rejected by the Court, the Settlement Agreement  
18 purports to consider the amount of the settlement checks as an "offset" stating:

19 Offset. If a court or arbitrator finds that Employee's release of any  
20 claims under this agreement is invalid or unenforceable. Company  
21 will have the right to obtain an offset for any amounts to which  
22 Employee is found to be entitled in any trial, arbitration, proceeding,  
23 settlement, or other disposition of any action pertaining to any wage  
24 any hour claims Employee has against company, including any rights  
Employee may have to recover compensation or settlement proceeds  
in a lawsuit involving the claims.

25 *See* Haines Decl., ¶ 3, Exh. B at ¶ 10.

26 The Settlement Agreement and Release is further improper in that it attempts to  
27 require putative class members to agree that that the claims being waived are "disputed  
28 claims," despite the fact that the Court has already established Safelite's liability as a

1 matter of law in granting Plaintiff's Motion for Partial Summary Judgment. Specifically,  
 2 the Settlement Agreement and Release states as follows:

3       Waiver of Disputed Claims. Employee agrees that California Labor  
 4 Code 206.5 is not applicable because there is a good faith dispute as  
 5 to whether Company owes wages to Employee. Section 206.5  
 6 provides, in pertinent, as follows: "*An employer shall not require the*  
 7 *execution of a release of claim or right on account of wages due, or*  
*to become due, or made as an advance on wages to be earned, unless*  
*payment of those wages has been made.*"

8 See Haines Decl., ¶ 3, Exh. B at ¶ 6.

9       The Settlement Agreement and Release further attempts to improperly release  
 10 claims brought under the Private Attorney General Act ("PAGA"), as: (1) none of the  
 11 putative class members who Safelite is attempting to settle with were ever authorized to  
 12 bring a PAGA claim on behalf of the LWDA as required by Code section 2699.3; (2)  
 13 Safelite never obtained court approval of the PAGA release, as required by Labor Code  
 14 section 2699(k)(2); and (3) Safelite did not provide any consideration to the LWDA as  
 15 required by Labor Code section 2699(i). *Slavkov v. Fast Water Heater Partners I, LP*,  
 16 Case No. 14-cv-04324-JST, 2015 WL 6674575 (N.D. Cal., Nov. 2, 2015), is instructive  
 17 of the problems with Safelite's attempt to dismiss the PAGA claim. In *Slavkov* the  
 18 employer improperly attempted to have its employees release claims brought under the  
 19 PAGA, and ordered parties to send a curative notice to the putative class members who  
 20 were offered a release informing them that the releases were invalid. *Id.* at \*2. Judge  
 Tigar of the Northern District reasoned as follows:

21       Section 2(b) of the settlement agreement, entitled "Release of Claims  
 22 raised in the Lawsuit," specifically provides that the claims released  
 23 include those under the FLSA, PAGA, and the California Labor  
 24 Code. ECF No. 54, Exh. 4 at 2. Neither the settlement agreement nor  
 25 the two letters make any mention of the possibility of judicial  
 26 approval — instead, the unmistakable perception is that accepting the  
 Defendants' settlement offer will release *all* claims raised by  
 Plaintiffs.

27       This is no minor omission. The sole reason for Defendants' contact  
 28 with the putative class was to solicit releases of their claims against  
 Defendants, yet the letters neglected to inform the recipients that

1 some of those claims could not, in fact, be released solely through the  
2 proffered agreement.

3 \*\*\*

4 Defendants cannot save themselves by suggesting, as they did at oral  
5 argument, that they can simply now apply for judicial approval. The  
6 Court's concern here is the misleading nature of the releases at the  
7 time they were offered, not whether they can ultimately be enforced.  
8 In any event, it is doubtful the settlement agreements are valid in  
9 light of the significant misinformation that accompanied them.

10 *Id.* at \*6.

### 11 **III. SUMMARY OF RELIEF SOUGHT**

12 Federal Rule of Civil Procedure 23(d) ('Rule 23(d)') permits a court overseeing a  
13 class action to issue orders which 'determine the course of proceedings' or 'impose  
14 conditions on the representative parties.' Fed. R. Civ. P. 23(d). Because class actions  
15 present opportunities for abuse as well as problems for courts and counsel in the  
16 management of cases...a district court has both the duty and the broad authority to  
17 supervise communication between the parties and potential class members. *Gulf Oil Co.*  
18 *v. Bernard*, 452 U.S. 89, 99-100 (1981). "The Court's duty to supervise communications  
19 with potential class members exists even before a class is certified. Communications  
20 which are misleading 'pose a serious threat to the fairness of the litigation process, the  
21 adequacy of representation, and the administration of justice generally. Accordingly, a  
22 court may 'take action to cure the mis-communication and to prevent similar problems  
23 in the future' where 'potential class members have received inaccurate, confusing or  
24 misleading communications. The court's responsibility to monitor communications is  
25 heightened where potential class members are unrepresented by their own counsel.'" *Cheverez v. Plains All American Pipeline, LP*, No. CV15-4113 PSG (JEMx), 2016 WL  
26 861107, at \*2 (C.D. Cal. March 3, 2016).

27 For the reasons discussed herein, Plaintiff respectfully requests that the Court  
28 issue an Order to: (1) enjoin Defendant Safelite Fulfillment Inc. from entering into any  
further individual settlement agreements pending a ruling on Plaintiff's Motion for  
Class Certification, which is set for hearing on September 29, 2017; (2) invalidating  
those settlement agreements already entered into with putative class members as part of

1 the *Chindarah v. Pick Up Stix* campaign; (3) require a curative letter to be sent to the  
2 putative class; and (4) permitting Plaintiff to file a Motion for Sanctions against Safelite  
3 and its counsel for their improper conduct in connection with the *Chindarah* campaign.

4  
5 Dated: August 23, 2017

HAINES LAW GROUP, APC

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8 Attorneys for Plaintiff  
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